

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

James L. Shepard,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:10cv222
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Pickaway Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz filed on May 31, 2011 (Doc. 12), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired August 5, 2011, hereby ADOPTS said Report and Recommendation.

Petitioner filed a motion for extension of time to file objections to the Report and Recommendation for forty-five days on June 15, 2011 which the Court granted (Doc. 15). The time has lapsed and petitioner has not filed any objections.

Accordingly, petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claims in Grounds Two and Four of the petition, which this Court has concluded are waived and thus procedurally barred from review. Under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" will not find it debatable whether this Court is correct in its procedural ruling.

A certificate of appealability will not issue with respect to the Fourth Amendment claims alleged in Grounds One and Three of the petition, because petitioner has not stated a “viable claim of the denial of a constitutional right,” nor are the issues presented in those grounds for relief “adequate to deserve encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n. (1983)); *see also* 28 U.S.C. 2253(c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith,” and therefore, will **DENY** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court